

**Examination of the Compliance and Oversight
Related to Green River Marina's Lease Agreement
with the Department of Parks**



CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS
www.auditor.ky.gov

209 ST. CLAIR STREET
FRANKFORT, KY 40601-1817
TELEPHONE (502) 564-5841
FACSIMILE (502) 564-2912

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CRIT LUALLEN
AUDITOR OF PUBLIC ACCOUNTS

August 2, 2011

Gerry van der Meer, Commissioner
Kentucky Department of Parks
500 Mero Street
10th Floor Capital Plaza Tower
Frankfort, Kentucky 40601

William Dexter, Executive Director
Office of Legal Affairs
Tourism, Arts and Heritage Cabinet
500 Mero Street
24th Floor Capital Plaza Tower
Frankfort, Kentucky 40601

Dennis Brinley
Marie Tucker
Green River Marina
1293 Lone Valley Road
Campbellsville, Kentucky 42718

RE: Examination of the Compliance and Oversight Related to Green River Marina's Lease Agreement with the Department of Parks

Dear Madam and Sirs:

We have completed our Examination of Compliance and Oversight Related to Green River Marina's Lease Agreement with the Department of Parks (Parks). The report presents, in total, five findings and offers recommendations to Green River Marina related to its reporting of income and timely payments. We also offer recommendations to Parks to strengthen and improve the lease agreement and its monitoring of the lease agreement.

The Department of Parks (Parks) requested the Auditor of Public Accounts (APA) to perform an examination of the accuracy and timeliness of Green River Marina's reporting of gross receipts to Parks, as well as other issues. As a result of this request, the APA performed an examination to evaluate the financial reporting and contract compliance of Green River Marina.

209 ST. CLAIR STREET
FRANKFORT, KY 40601-1817

TELEPHONE 502.564.5841
FACSIMILE 502.564.2912
WWW.AUDITOR.KY.GOV

AN EQUAL OPPORTUNITY EMPLOYER M / F / D



Madam and Sirs
August 2, 2011
Page 2

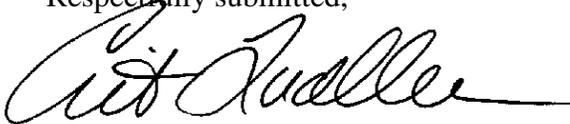
Examination procedures included interviews with staff members of Parks' Financial Operations, Internal Audits, Customer Service, and Facilities Maintenance/Management. Because Parks is located within the Tourism, Arts, and Heritage Cabinet (Tourism), the APA also interviewed the staff members of Tourism's Office of Legal Affairs and Tourism's Chief Financial Officer. The APA further interviewed representatives of the Green River Marina, the certified public accountant that performed their financial audits during the scope of our audit, and other parties with information related to this examination. In conjunction with the review of Green River Marina's license agreement, the APA also reviewed various Green River Marina financial reporting documents including concession reports, financial audits, and other financial documents for the period under review.

The scope of our examination included calendar years 2007, 2008, and 2009. The financial reporting that occurred during calendar year 2010 was included in our review to the extent possible but the financial audit for 2010 has not been performed. We were limited in our review of records because a fire on November 26, 2010 at Green River Marina destroyed their financial records. To accomplish this examination, the APA specifically focused on the following objectives:

- Evaluate the financial reporting and contract compliance of the Green River Marina.
- Determine whether sales commissions from Green River Marina and associated businesses' operating on the premises of Parks were properly paid to the Commonwealth of Kentucky.
- Evaluate the oversight of the Green River Marina contract by Parks.

The APA requests a report from Parks and Green River Marina on the implementation of audit recommendations within (60) days of the completion of the final report. If you wish to discuss this report further, please contact Brian Lykins, Executive Director of the Office of Technology and Special Audits, or me.

Respectfully submitted,



Crit Luallen
Auditor of Public Accounts



Examination of the Compliance and Oversight Related to Green River Marina's Lease Agreement with the Department of Parks

Examination Objectives

Green River Marina, Inc. is operated by a private contractor at the Green River Lake State Park. The Department of Parks (Parks) requested the Auditor of Public Accounts (APA) to perform an examination of the accuracy and timeliness of Green River Marina's reporting of gross receipts to Parks, as well as other issues. As a result of this request, the APA performed an examination to evaluate the financial reporting and contract compliance of Green River Marina. This review included calendar years 2007, 2008, and 2009. The financial reporting that occurred during calendar year 2010 was included in our review to the extent possible but the financial audit for 2010 has not been performed. We were limited in our review of records because a fire on November 26, 2010 at Green River Marina destroyed their financial records. To accomplish this examination, the APA specifically focused on the following objectives:

- Evaluate the financial reporting and contract compliance of the Green River Marina.
- Determine whether sales commissions from Green River Marina and associated businesses' operating on the premises of Parks were properly paid to the Commonwealth of Kentucky.
- Evaluate the oversight of the Green River Marina contract by Parks.

Background for State Leased Marinas

Parks leases nine marinas within the Kentucky State Parks system: Barren River, Dale Hollow, Green River, Kenlake, Kentucky Dam Village, Lake Barkley, Lake Cumberland, Paintsville, and Taylorsville. Each state leased marina has a separate and unique license agreement with Parks. These license agreements contain the specific contractual terms that were negotiated between Parks and each marina. With the exception of Kenlake and Kentucky Dam Village, the U. S. Corps of Engineers holds a superior lease to the Commonwealth of Kentucky and the Commonwealth subleases the lake property to the marinas.

The license agreement between the Commonwealth of Kentucky and Green River Marina, Inc. was originally dated December 1, 1971. This license agreement was amended on October 13, 1989 to have an extended term

ending on December 31, 2015 and was titled, "Amended and Restated License Agreement." Since 1989, this license agreement has been amended three times for various reasons.

Based on our objectives, this examination focused on the license agreement terms most relevant to financial reporting. The terms associated with rental payments, a maintenance account, record keeping, annual audits, and access to financial records were evaluated due to their relationship with financial reporting.

Findings and Recommendations

Finding 1: The sales commission received from brokering boats at Green River Marina is not included in the marina's gross receipts when calculating their rent payment to the Commonwealth.

The owners of Green River Marina have another private business brokering the sale of boats. According to their website, this business brokers boats for their company and for other companies. While the owners may broker boats that are located at other marinas across the country, it appears that any commissions from boat sales at Green River Marina would be applicable to the license agreement that Green River Marina has with the Commonwealth of Kentucky. According to the license agreement, Green River Marina should pay rent to the Commonwealth based on five and one-half percent of gross receipts from all operations. Revenue generated from brokering a boat sale at Green River Marina would increase gross receipts reported to Parks, which would increase the amount of rent paid to Parks.

Recommendations:

We recommend that Green River Marina take steps to account for any commissions on boat sales conducted on the marina's premises. This revenue should be included monthly in a separate category on the Concession Payment Report. The monthly rent payment should include the applicable percentage of revenue from commissions on boat sales for boats located at Green River Marina.

Finding 2: Green River Marina was not consistent in paying the required rental payments.

Green River Marina did not consistently pay its monthly rental payments in a timely manner. The marina's license agreement requires the rental payment

to be made monthly due on or before the close of business 10 working days after the end of the preceding month. However, the license agreement fails to define the term “working days” making it unclear whether the days refer to the marina’s days of operation or Parks five day work week. In addition, Green River Marina had not paid the 2008 and 2009 rental underpayment determined by annual financial audits. Per Parks’ license agreement with Green River Marina, an annual audit of the marina’s operations must be performed by a recognized qualified CPA firm. As part of this audit, the CPA firm determines any over or underpayment of the required five and one-half percent rental fee to be paid to Parks.

Recommendations:

We recommend that Green River Marina ensure its monthly concession reports and rental payments are submitted in a timely manner. Further, the marina should ensure underpayments identified through the CPA firm’s annual financial audits are also appropriately paid. We recommend that Parks revise their license agreement with Green River Marina to strengthen the requirements regarding rental payments and to address penalties for any late payments. For example, the requirement that the rental payment shall be due on or before the close of business 10 working days after the end of the preceding month should either be clearly defined or a specific payment date be given. In addition, we recommend that Parks adopt written policies and procedures that address the responsibilities of the local state park managers and Parks’ Financial Operations regarding the review of state leased marina’s rental payments. Staff should ensure rental payments are submitted timely and that any underpayments should be recorded and monitored to ensure timely collection. The policies and procedures should also discuss penalties that may apply for late payments.

Finding 3: Written policies and procedures were not developed to ensure proper completion and review of the Concession Payment Report.

The license agreement between Green River Marina and Parks appears to be the only written guidance identifying how Green River Marina should pay rent to the Commonwealth. However, the license agreement does not state that Green River Marina should complete and submit a Concession Payment Report. In addition, Parks does not have any written policies or procedures that specify how the rent payments should be reviewed or tracked. Without written policies and procedures related to the rent payment process, it is difficult to establish and document the vendor’s and Parks’ responsibilities.

Recommendations: We recommend Parks develop policies and procedures regarding the completion and

review of the Concession Payment Reports to address the following issues:

- A cash basis accounting method should be used to recognize and record gross receipts of marina operations.
- Any adjustments made to a Concession Payment Report should be accompanied by a corresponding explanation of the adjustment.
- The supporting documentation that should routinely be provided.
- A specific deadline for the submission of the Concession Payment Report or clearly define the 10 working day period for the report to be submitted.
- The addition of a late fee to the license agreement to encourage timely payments and to specify those responsible to collect the fee.
- Procedures conducted by the local state park manager to investigate when concerns are expressed regarding the amount of gross receipts reported on the Concession Payment Report.
- Procedures at Parks’ Financial Operations related to reviewing the submitted Concession Payment Report, re-entering data into another spreadsheet that could be submitted electronically, and performing an analysis of the submitted data.
- Parks’ staff responsible for contacting the marina vendor to discuss miscalculations or other questions related to the Concession Payment Report.
- Definitions of sale categories used to complete the Concession Payment Report and the specific activities that should be included in the sale category.

We also recommend that the Concession Payment Report be updated to include the following:

- A policy statement that gross receipts should be calculated using cash basis accounting.
- A clause stating that by signing the report the person certifies that cash basis accounting was used as required by Parks’ policy and that the sale categories reflect all operations of the marina.
- The required date for Parks to receive the Concession Payment Report and the late fee policy.

Finding 4: The license agreement provides no penalties for contractors that do not comply with the terms of the license agreements.

Green River Marina’s license agreement does not include penalties for not complying with the terms of the license agreement. The license agreement incorporates specific terms that Green River Marina

must meet; however, no penalties or consequences are specified in the license agreement if Green River Marina does not comply with the terms of the agreement. By not providing penalties in the license agreement for noncompliance, no incentive exists to comply with the agreement. According to a Tourism attorney, even if the license agreement with Green River Marina was terminated, Parks and the Commonwealth could face a significant financial obligation to reimburse the marina's owners for the capital improvements made to the marina.

Recommendations: We recommend that Parks amend the license agreements with state leased marinas to include specific penalties for noncompliance to be associated with the requirements of the license agreement. For example, penalties could be in the form of interest charges or administrative charges based on the length of time that the operator was out of compliance. Parks should also adopt policies and procedures to oversee and enforce license agreement terms and penalties. These procedures should identify who is responsible for following up on audit findings and contacting the marina to inform them of applicable penalties due to noncompliance. We also recommend that Parks amend the license agreement to include termination language that could mitigate the financial risks to the Commonwealth if the marina operator is in breach of the terms in the license agreement. This amendment should not minimize the improvements made by the marina operator but should provide additional protection to Parks and the Commonwealth if the marina operator is in substantial breach of their license agreement. The license agreement should also define what noncompliance would constitute a substantial breach of contract.

Finding 5: A review of Green River Marina was conducted in 2008 by Parks' Internal Audit Branch but the report was not distributed to appropriate personnel and it did not result in Parks taking action to address audit findings.

Parks' Internal Audit Branch conducted a review of Green River Marina in August 2008. This review did not result in policy and procedure changes or any documented actions. A memorandum was prepared instead of a formal report because Green River Marina refused to provide requested documents. Internal Audit did not develop a finding that Green River Marina declined to provide requested information though the license agreement allowed Parks to access the marina's records. This memorandum was provided to two members of executive management in Parks. However, Green River Marina was not made aware of the review's findings, though they were aware that a review was conducted. Our examination of the internal audit process found that the Internal Audit Branch did not have written policies and procedures concerning how

special request audits are initiated, approved, and reported. An internal audit has limited benefit if the audit reports are not finalized and distributed to all parties involved.

Recommendations: We recommend that Parks develop written guidelines concerning the Internal Audit Branch audit plan and process. At a minimum, a policy should be developed to address the process to follow when performing a special audit. The policy should address the report and distribution process. A standard distribution checklist should be developed and consistently followed for the various types of internal audits or reviews. This distribution checklist should include Financial Operations given their responsibility to review financial information. We also recommend that the refusal to provide documentation as required by a license agreement or other contract should be documented by Internal Audit as a finding and this refusal should not prevent the audit from being completed and formally reported. We further recommend that Parks address the recommendations made in the 2008 Internal Audit review.

Chapter 1

Introduction and Background

Scope

Green River Marina, Inc. is operated by a private contractor at the Green River Lake State Park. The Department of Parks (Parks) requested the Auditor of Public Accounts (APA) to perform an examination of the accuracy and timeliness of Green River Marina's reporting of gross receipts to Parks, as well as other issues. As a result of this request, the APA performed an examination to evaluate the financial reporting and contract compliance of Green River Marina. This review included calendar years 2007, 2008, and 2009. The financial reporting that occurred during calendar year 2010 was included in our review to the extent possible but the financial audit for 2010 has not been performed. We were limited in our review of records because a fire on November 26, 2010 at Green River Marina destroyed their financial records. To accomplish this examination, the APA specifically focused on the following objectives:

- Evaluate the financial reporting and contract compliance of the Green River Marina.
- Determine whether sales commissions from Green River Marina and associated businesses' operating on the premises of Parks were properly paid to the Commonwealth of Kentucky.
- Evaluate the oversight of the Green River Marina contract by Parks.

To address these objectives, the APA interviewed staff members of Parks' Financial Operations, Internal Audits, Customer Service, and Facilities Maintenance/Management. Because Parks is located within the Tourism, Arts, and Heritage Cabinet (Tourism), the APA also interviewed the staff members of Tourism's Office of Legal Affairs and Tourism's Chief Financial Officer. The APA further interviewed representatives of the Green River Marina, the certified public accountant (CPA) that performed their financial audits during the scope of our audit, and other parties with information related to this examination. In addition, we interviewed representatives from a sample of other state leased marinas and the U. S. Corps of Engineers.

Green River Marina's applicable license agreements with Parks and any amendments were reviewed along with any applicable reports or information provided by Parks' Internal Audit. Various Green River Marina financial reporting documents were reviewed, including concession reports, financial audits, and other financial documents for the period under review. We also reviewed a license agreement and concession reports related to other state leased marinas.

Background

Parks leases nine marinas within the Kentucky State Parks system: Barren River, Dale Hollow, Green River, Kenlake, Kentucky Dam Village, Lake Barkley, Lake Cumberland, Paintsville, and Taylorsville. Each state leased marina has a separate and unique license agreement with Parks. These license agreements contain the specific contractual terms that were negotiated between Parks and each marina. With the exception of Kenlake and Kentucky Dam Village, the U. S. Corps of Engineers holds a superior lease to the Commonwealth of Kentucky and the Commonwealth subleases the lake property to the marinas.

Chapter 1
Introduction and Background

**Green River
 Marina License
 Agreement**

The license agreement between the Commonwealth of Kentucky and Green River Marina, Inc. was originally dated December 1, 1971. This license agreement was amended on October 13, 1989 to have an extended term ending on December 31, 2015 and was titled, “Amended and Restated License Agreement.” Since 1989, this license agreement has been amended three times for various reasons. The following table provides an overview of each amendment.

Table 1: Overview of the Amendments to Green River Marina’s License Agreement

Date of Agreement and Title	Purpose
July 27, 1992 – First Amendment to the Amended and Restated License Agreement of October 13, 1989.	Perfecting and assigning the agreement for a new licensee to assume all duties, liabilities, and responsibilities in operating the Green River Marina. In consideration of the license extension, the licensee agrees to make specific improvements at the licensee’s sole expense.
November 6, 1997 – Second Amendment to the Amended and Restated License Agreement of October 13, 1989.	Perfecting and assigning the agreement for a new licensee to assume all duties, liabilities, and responsibilities in operating the Green River Marina. This amendment also redefines specific terms of the agreement.
May 25, 2001 – Third Amendment to the Amended and Restated License Agreement of October 13, 1989.	In exchange for a ten year extension of their license agreement, the licensee will expand the existing marina facility by infusing a minimum of \$800,000 into new construction and relocation work. The current license agreement now expires on December 31, 2025.

Source: The Auditor of Public Accounts based on the license agreements provided by the Department of Parks.

The 1989 license agreement phased in, after a five year period, the current rental payment terms. The licensee agreed to pay the Commonwealth rent in the form of a percentage of gross receipts equal to five and one-half percent of all operations of the marina. Per the agreement, payment shall be made monthly and due on or before the close of business ten working days after the end of the preceding month.

The process of remitting the rental payment was determined through interviews and a review of various documents. The process to make rental payments was not specified in the license agreement. Using the Concession Payment Report, a form provided by Parks, Green River Marina staff enters revenue data within the following sale categories:

- Boat Slips;
- Boat Rental;
- Floating Cabins;
- Dinner Cruise;
- Gas and Oil;
- Food and Store Items;
- Labor; and,
- Fishing License, Live Bait, and Pump Out.

Chapter 1

Introduction and Background

For each sale category, Green River Marina calculates the rental payment to Parks by multiplying the revenue amount listed for each sale category by five and one-half percent and then adding the totals for each sale category. A blank copy of this form is attached. See Exhibit 1.

Green River Marina staff submits the Concession Payment Report, along with the corresponding payment to the local state park, which is Green River Lake State Park. The individual signing the Concession Payment Report certifies “the amounts entered on the report are true and correct and comply with the terms of the License Agreement currently in effect.”

Once the Concession Payment Report and payment is submitted, the Green River Lake State Park Manager (Park Manager) stamps the date received on the Concession Payment Report, reviews the calculations on the Concession Payment Report, and makes sure the payment amount agrees with the submitted check. The Park Manager enters this payment into their daily business report (DBR) and deposits the required funds in the local bank. The DBR captures all financial transactions and receipts from the local state park’s businesses by activity. The rental payment is then submitted to Parks and recorded in a restricted fund account.

Parks’ state Financial Operations, located in Frankfort, receives the paper copy of the Concession Payment Report either through an email attachment or by postal service. Financial Operations staff manually enters the information from the paper copy of the Concession Payment Report into a spreadsheet titled Commissions, along with the amount paid from the DBR. This spreadsheet summarizes the total amount of gross receipts per sale category, the amount to be paid to Parks, and the actual amount deposited per the DBR. Staff from Parks’ Financial Operations verifies that the payment calculations agree with the DBR bank deposits.

Audit Review Process

The 1989 license agreement, as well as the agreement’s subsequent amendments, required an audit of Green River Marina’s operations for the preceding calendar year by an independent CPA firm of recognized ability. The license agreement also requires Green River Marina to pay for the audit and that a copy of the audit should be submitted to Parks no later than three and one-half months after Green River Marina’s fiscal year. Parks is responsible for the distribution of the annual audit.

According to information provided through interviews, Parks’ Financial Operations staff relies on the annual audit’s reconciliation of actual revenue to the submitted concession reports to determine whether Green River Marina overpaid or underpaid Parks. Once Financial Operations receives the audit, staff will either send a letter requesting the amount of the underpayment or they send a check for any overpayment based on the results of the audit reconciliation process.

Chapter 1
Introduction and Background

License Agreement Terms

Based on our objectives, this examination focused on the license agreement terms most relevant to financial reporting. The terms associated with rental payments, a maintenance account, record keeping, annual audits, and access to financial records were evaluated due to their relationship with financial reporting. While these terms were in the Green River Marina’s license agreement since the 1989 Amended and Restated License Agreement, the second amendment dated November 6, 1997 contains the current version of the terms used in our review. These sections are provided in the following table:

Table 2: Summary of Relevant Contract Requirements

Category	Exact Terminology of the Contract Requirements
Rental Payments	<p>“The Licensee agrees to pay to the Commonwealth rent in the form of a percentage of gross receipts of all operations of the marina except proceeds collected as taxes, five and one-half percent (5.5 percent) of gross receipts from all operations.</p> <p>Payment shall be made monthly and shall be due on or before the close of business ten (10) working days after the end of the preceding month.”</p>
Maintenance Account	<p>“Throughout the term of this Agreement, the Licensee shall deposit in a Kentucky bank on the 10th business day of each month a sum of money equal to two and one-half percent (2.5 percent) of the gross sales of the total marina operation realized for the preceding one month for the purpose of providing to the Licensee a working maintenance account.”</p> <p>“The marina operator shall be deemed by this agreement to be authorized to draw from the above account as needed for the purpose of maintenance throughout the year, with the prior written approval of the Commissioner of Parks or his designee.”</p>
Recordkeeping	<p>“The Licensee shall be required to keep complete and accurate financial records of all transactions relating to the marina and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the licensed premises... The Licensee’s financial records will be subject to inspection or audit by designated representatives of the Commonwealth at all times during regular business hours and shall be made available at a convenient location for that purpose for not less than five (5) years from the date of origination.”</p>
Annual Audits	<p>“The Licensee further covenants that promptly after the close of each fiscal year it will, at its own expense, cause an audit to be made of its books and accounts relating to the operation of the marina for the proceeding calendar year by an independent firm of certified public accountants of recognized ability and standing, and a copy of the audit shall be submitted to the Department of Parks no later than three and one-half months after the License’s fiscal year end ...”</p>

Chapter 1

Introduction and Background

Access to Records	“[T]he Commissioner of Parks or his designee shall be permitted by the Licensee to enter the premises and make periodic evaluations of the Licensee’s ongoing performance as it pertains to adequacy of service to the public, safety considerations, record keeping and facility maintenance.” “The Licensee agrees that the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts and the Legislative Research Commission or their duly authorized representatives shall have access to any books, documents, papers, records, or other evidence which are directly pertinent to this Agreement for the purpose of financial audit or program review.”
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Source: The Auditor of Public Accounts based on the November 6, 1997 Second Amendment and Assignment to the Amended and Restated License Agreement of October 13, 1989 provided by the Department of Parks.

Parks 2008 Green River Marina Review

In addition to other information reviewed, the APA also reviewed a 2008 “limited review” of Green River Marina conducted by Parks’ Internal Audit. See Exhibit 2. This review resulted in the following three recommendations:

1. Parks enforce 304 KAR 1:010 – Parks should specify to Green River Marina that they maintain specific documents and perform daily recordkeeping functions.
2. Parks interpret the meaning of “independent” certified public accountant as stated in 304 KAR 1:010, Section 2.
3. No boat(s) are to be permanently docked at the gasoline dock as this is a safety hazard.

Findings and Recommendations

Finding 1: The sales commission received from brokering boats at Green River Marina is not included in the marina's gross receipts when calculating their rent payment to the Commonwealth.

The owners of Green River Marina have another private business brokering the sale of boats. According to their website, this business brokers boats for their company and for other companies. While the owners may broker boats that are located at other marinas across the country, it appears that any commissions from boat sales at Green River Marina would be applicable to the license agreement that Green River Marina has with the Commonwealth of Kentucky. According to the license agreement, Green River Marina should pay rent to the Commonwealth based on five and one-half percent of gross receipts from all operations. Revenue generated from brokering a boat sale at Green River Marina would increase gross receipts reported to Parks, which would increase the amount of rent paid to Parks.

According to representatives of Green River Marina, this boat brokering business is primarily internet-based with the phone calls received by an individual located in a different city. Because the boat brokered by the company and the point of sale can be anywhere around the country, the owners have not included this revenue on concession reports from Green River Marina submitted to Parks. While Parks' Internal Audit had a concern that several businesses may be operating from Green River Marina, the APA could only substantiate that this business had operations at the marina.

The CPA used by Green River Marina also confirmed that any revenue from brokering boats was not included on Green River Marina's financial statements. The CPA stated that the commissions for boat brokering are a part of another company not audited by the CPA.

According to the Green River Marina website on April 25, 2011, 39 of the 95 boats, 41 percent, were located at Green River Marina. The homepage of the Green River Marina website has a link titled, "Boats For Sale." The link on this website allows the user to search boats by location, including Green River Lake and Green River Marina.

The 39 boats for sale at Green River Marina had listed sale prices that totaled \$7.4 million. If Green River Marina sold these boats at their full list prices with a six percent sales commission rate, it would result in over \$24,000 in additional rent paid to Parks.

To determine whether other state leased marinas were providing brokerage services and reporting it to Parks on their concession reports; we randomly selected three other state leased marinas to interview. Two of the marinas contacted did not provide boat brokerage services. One of the two marina operators indicated that the U. S. Corps of Engineers does not allow the sale or the advertisement of brokering services on Federal waters. A third marina owner stated that they have contracted with a broker to sell boats at its marina. The marina includes the fees received from the broker in the gross receipts on their concession reports under the "utilities/cable television" category, but the owner stated they did not have a lot of brokerage sales.

Findings and Recommendations

Because the license agreement requires rent to be based on gross receipts from all operations, the 1989 license agreement lists the activities that the marina's operations shall include. One of the activities in the agreement is, "[l]imited incidental sales of boats, motors, boat accessories." This list of activities ends with the following all inclusive phrase, "[a]ny other business activities, subject to the approval of the Department of Parks and the Corps of Engineers." While "limited incidental sales of boats" appears to be subjective, the last phrase clearly includes any other business that takes place on the premises of the marina. Therefore, the rent paid to Parks should include the commission earned from boat sales on the premises of Green River Marina.

The U.S. Corps of Engineers verbally agreed that commissions should be included in revenue but they did not provide requested written documentation that clearly states if the activity of brokering boats on Green River Lake is allowed. However, the U.S. Corps of Engineers provided the license agreement pertaining to Green River Marina that defines gross receipts as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub lessees and licensees.

By not including the commissions earned from boat sales, Green River Marina is not accurately reporting their gross receipts from all operations. Because their rent payment is based on gross receipts, Green River Marina's rent is not accurately paid.

Recommendations

We recommend that Green River Marina take steps to account for any commissions on boat sales conducted on the marina's premises. This revenue should be included monthly in a separate category on the Concession Payment Report. The monthly rent payment should include the applicable percentage of revenue from commissions on boat sales for boats located at Green River Marina.

Finding 2: Green River Marina was not consistent in paying the required rental payments.

Green River Marina did not consistently pay its monthly rental payments in a timely manner. The marina's license agreement requires the rental payment to be made monthly due on or before the close of business 10 working days after the end of the preceding month. However, the license agreement fails to define the term "working days" making it unclear whether the days refer to the marina's days of operation or Parks five day work week. In addition, Green River Marina had not paid the 2008 and 2009 rental underpayment determined by annual financial audits. Per Parks' license agreement with Green River Marina, an annual audit of the marina's operations must be performed by a recognized qualified CPA firm. As part of this audit, the CPA firm determines any over or underpayment of the required five and one-half percent rental fee to be paid to Parks.

Chapter 2
Findings and Recommendations

Based on an interview with the Park Manager, Green River Marina’s monthly Concession Payment Report is reviewed for calculation errors and then deposited by the next day. The Park Manager stated that Green River Marina is considered a separate business from Green River Lake State Park. Involvement by the Park Manager is minimal unless otherwise requested by Parks. Routinely, the Park Manager emailed or called the marina if their rental payments were late. According to the Park Manager, once the marina’s payments were consistently late, the Park Manager began to inform the manager’s supervisor of the late payments.

The concession reports for Green River Marina were requested and reviewed to determine whether the required rental payments were properly paid to the Commonwealth of Kentucky. It was confirmed that Green River Marina was paying rent to the Commonwealth of Kentucky at the rate of five and one-half percent for the reported sales categories. However, because the term, “ten (10) working days after the end of the preceding month,” was not adequately defined, it was difficult to determine the exact number of late rental payments.

Given the time period was not clearly defined, the APA conservatively chose the 15th or after of the preceding month to identify a rent payment as late. Using this date, Green River Marina made late payments 36 out of 47 months during calendar years 2007 to 2010. This does not include those months without a date stamp. The table below illustrates the dates that Green River Marina signed their concession reports and the dates that Green River Lake State Park received the concession reports.

Table 3: Schedule of Completed and Submitted Green River Marina Concession Payment Reports for 2007 through 2010

2007	January	February	March	April	May	June
Date Report Signed by Green River Marina	2/19/2007	3/18/2007	4/12/2007	5/7/2007	6/21/2007	7/14/2007
Date Report Received by Green River Lake State Park	2/21/2007	3/26/2007	4/16/2007	5/10/2007	6/23/2007	7/20/2007
2008						
Date Report Signed by Green River Marina	2/18/2008	3/6/2008	4/3/2008	5/14/2008	6/25/2008	7/17/2008
Date Report Received by Green River Lake State Park	2/22/2008	3/6/2008	4/7/2008	5/19/2008	6/25/2008	7/23/2008
2009						
Date Report Signed by Green River Marina	Not Dated	3/20/2009	4/10/2009	5/10/2009	6/15/2009	7/15/2009
Date Report Received by Green River Lake State Park	3/2/2009	3/24/2009	No Date Stamp	5/20/2009	6/24/2009	No Date Stamp

Chapter 2
Findings and Recommendations

2010						
Date Report Signed by Green River Marina	2/15/2010	3/3/2010	4/30/2010	5/12/2010	7/4/2010	7/16/2010
Date Report Received by Green River Lake State Park	3/9/2010	3/9/2010	5/11/2010	7/8/2010	7/8/2010	8/4/2010

2007	July	August	September	October	November	December
Date Report Signed by Green River Marina	8/2/2007	9/11/2007	10/20/2007	11/11/2007	12/17/2007	12/19/2007
Date Report Received by Green River Lake State Park	8/6/2007	9/17/2007	10/24/2007	11/16/2007	12/21/2007	12/21/2007
2008						
Date Report Signed by Green River Marina	8/21/2008	8/16/2008	10/10/2008	11/4/2008	12/16/2008	1/12/2009
Date Report Received by Green River Lake State Park	8/27/2008	9/22/2008	10/24/2008	11/26/2008	1/14/2009	1/14/2009
2009						
Date Report Signed by Green River Marina	8/15/2009	9/29/2009	10/15/2009	11/15/2009	Not Dated	12/15/2009
Date Report Received by Green River Lake State Park	8/19/2009	10/5/2009	11/13/2009	12/12/2009	12/17/2009	12/17/2009
2010						
Date Report Signed by Green River Marina	8/15/2010	9/15/2010	10/18/2010	Not Dated	Not Dated	**
Date Report Received by Green River Lake State Park	9/20/2010	10/22/2010	11/23/2010	11/29/2010	11/29/2010	**

Source: The Auditor of Public Accounts based on the concession reports provided by the Department of Parks.

** No form had been submitted at the time of the request.

As part of the annual financial audit required by the license agreement, the CPA performs a reconciliation of gross receipts to the amounts reported on the monthly concession reports submitted by Green River Marina. The APA reviewed the annual financial audits for 2007, 2008, and 2009 that were provided by Green River Marina’s CPA. The audits determined that Green River Marina owed the Commonwealth of Kentucky “underpaid” rental fees for 2007, 2008, and 2009. The following table provides the underpayment amounts calculated for each calendar year by the CPA.

Findings and Recommendations

Table 4: Underpayments Determined by Annual Financial Audit Reconciliations

Calendar Year	Amount of Underpayment
2007	\$15,484
2008	4,523
2009	1,889

Source: The Auditor of Public Accounts based on the annual financial audits provided by Green River Marina’s CPA.

A review of payment history and meetings with Parks’ Financial Operations revealed that Green River Marina paid the underpayment amount for 2007, but the underpayments for 2008 and 2009, for a total of \$6,412, had not been paid. Parks did not record the underpaid amounts as an accounts receivable to ensure the payment was ultimately made. After the APA questioned the payment of these amounts during the examination process, Green River Marina paid Parks the \$6,412 in underpayments.

Without a clear requirement in their license agreement to specify when the rental payment is due or when late fees will be assessed, it is difficult for Parks to require payment by a specified date or to apply late fees. The lack of a formal process to track payments could result in Parks not receiving the full amount of rental revenue due from Green River Marina or other state leased marinas.

Recommendations

We recommend that Green River Marina ensure its monthly concession reports and rental payments are submitted in a timely manner. Further, the marina should ensure underpayments identified through the CPA firm’s annual financial audits are also appropriately paid.

We recommend that Parks revise their license agreement with Green River Marina to strengthen the requirements regarding rental payments and to address penalties for any late payments. For example, the requirement that the rental payment shall be due on or before the close of business 10 working days after the end of the preceding month should either be clearly defined or a specific payment date be given.

In addition, we recommend that Parks adopt written policies and procedures that address the responsibilities of the local state park managers and Parks’ Financial Operations regarding the review of state leased marina’s rental payments. Staff should ensure rental payments are submitted timely and that any underpayments should be recorded and monitored to ensure timely collection. The policies and procedures should also discuss penalties that may apply for late payments.

Findings and Recommendations

**Finding 3:
Written policies
and procedures
were not developed
to ensure proper
completion and
review of the
Concession
Payment Report.**

The license agreement between Green River Marina and Parks appears to be the only written guidance identifying how Green River Marina should pay rent to the Commonwealth. However, the license agreement does not state that Green River Marina should complete and submit a Concession Payment Report. In addition, Parks does not have any written policies or procedures that specify how the rent payments should be reviewed or tracked. Without written policies and procedures related to the rent payment process, it is difficult to establish and document the vendor's and Parks' responsibilities.

According to the license agreement, the “[l]icensee agrees to pay to the Commonwealth rent in the form of a percentage of gross receipts of all operations of the marina except proceeds collected as taxes, five and one-half percent (5.5 percent) of gross receipts from all operations. Payment shall be made monthly and shall be due on or before the close of business ten (10) working days after the end of the preceding month.” The completion of a Concession Payment Report is not discussed within any of the associated license agreements.

The Concession Payment Report is a form in which each row specifies the sale category and location for entering the gross receipt amounts. (See Exhibit 1). The amounts are then multiplied by the applicable percentage, specified in the license agreement, to calculate the total rental payment to Parks. However, the staff from Green River Marina and Parks were not aware of any written guidance that was provided to define sale categories, gross receipts, or the accounting method used to determine when revenue is recognized. Without written guidance, there is no documentation that these explanations have been provided to state leased marinas. For example, a state leased marina may use various accounting methods at different times and Parks has no written policy stating the accounting method that should be used to record gross receipts.

According to staff with Green River Marina, the revenue entered for each sale category was previously determined by the accrual method of accounting. They switched to the cash basis of accounting based on the verbal direction of Parks. However, it is not documented when this change was made. According to Parks' staff, they directed this change when Green River Marina was asked why there were negative gross receipts being reported. Parks was told that this was due to reservations that were canceled and Green River Marina needed to subtract this revenue because rent was paid on revenue that was never received. Parks staff said they were not aware that Green River Marina was using the accrual method.

Regardless of whether the accrual or cash method was used, the required method of reporting gross receipts was not documented in writing to counteract this issue. This issue was further reviewed by contacting the independent CPA who conducted the financial audits of Green River Marina for 2007, 2008, and 2009. After a review found that these statements were presented using the cash basis of accounting, we asked the auditor when the cash method and accrual method was used. The CPA's response was as follows:

The audited financial statements have always been prepared on the cash basis. When preparing the concession reports, the marina staff used monthly accrual and monthly cash at different times. That is why I reconciled the concession reports with totals at the end of the audit. The difference of receivables at the end of each year was immaterial so the totals for accrual approximated the totals for cash basis.

Additionally, Parks' staff are not aware of any policies and procedures defining their roles and responsibilities for reviewing the concession report and what procedures should be performed when these reports are received by Parks. After completion, concession reports are submitted to the local state parks and are then forwarded to Parks' Financial Operations for data entry.

According to the Park Manager, the amounts on the concession reports are re-calculated to check for accuracy and the concession report's total agrees to the check amount. The amount submitted would only be investigated if the amount on the report did not agree with the check.

At the state level, staff from Parks' Financial Operations enters the monthly concession report amounts from state leased marinas into a spreadsheet titled "Commissions." Staff verify that the calculations are correct and that the monthly total agrees with the amount of the bank deposit. All of the monthly concession reports for a calendar year are entered into the Commissions spreadsheet. Staff stated that no other analysis is done to determine if the amounts provided appeared accurate or legitimate.

Given that Parks does not have written policies and procedures, Parks' Financial Operations staff were not aware of a formal deadline to receive the Concession Payment Report, though the license agreement requires the rental payment to be made 10 working days from the end of the preceding month. Staff did, however, prefer to receive the concession reports by the 25th of the month. The license agreement does not provide for a penalty or late fee if the rental payment is not made in a timely manner.

Findings and Recommendations

Rent from state leased marinas provides significant revenue and should be accounted for properly. Without written guidance specifically outlining how the Concession Payment Report should be completed, there is no assurance what the amounts reported represent and how the amounts were calculated. Written policies and procedures would provide clear expectations for completing the Concession Payment Report, the process to review the report, additional report analysis to be performed, and corrective actions to be taken.

Recommendations We recommend Parks develop policies and procedures regarding the completion and review of the Concession Payment Reports to address the following issues:

- A cash basis accounting method should be used to recognize and record gross receipts of marina operations.
- Any adjustments made to a Concession Payment Report should be accompanied by a corresponding explanation of the adjustment.
- The supporting documentation that should routinely be provided.
- A specific deadline for the submission of the Concession Payment Report or clearly define the 10 working day period for the report to be submitted.
- The addition of a late fee to the license agreement to encourage timely payments and to specify those responsible to collect the fee.
- Procedures conducted by the local state park manager to investigate when concerns are expressed regarding the amount of gross receipts reported on the Concession Payment Report.
- Procedures at Parks' Financial Operations related to reviewing the submitted Concession Payment Report, re-entering data into another spreadsheet that could be submitted electronically, and performing an analysis of the submitted data.
- Parks' staff responsible for contacting the marina vendor to discuss miscalculations or other questions related to the Concession Payment Report.
- Definitions of sale categories used to complete the Concession Payment Report and the specific activities that should be included in the sale category.

We also recommend that the Concession Payment Report be updated to include the following:

- A policy statement that gross receipts should be calculated using cash basis accounting.
 - A clause stating that by signing the report the person certifies that cash basis accounting was used as required by Parks' policy and that the sale categories reflect all operations of the marina.
 - The required date for Parks to receive the Concession Payment Report and the late fee policy.
-

Findings and Recommendations

Finding 4: The license agreement provides no penalties for contractors that do not comply with the terms of the license agreements.

Green River Marina's license agreement does not include penalties for not complying with the terms of the license agreement. The license agreement incorporates specific terms that Green River Marina must meet; however, no penalties or consequences are specified in the license agreement if Green River Marina does not comply with the terms of the agreement. By not providing penalties in the license agreement for noncompliance, no incentive exists to comply with the agreement. According to a Tourism attorney, even if the license agreement with Green River Marina was terminated, Parks and the Commonwealth could face a significant financial obligation to reimburse the marina's owners for the capital improvements made to the marina.

The license agreement does not include a penalty for late rental payments, an inadequate maintenance account, failure to provide and maintain adequate financial records, or the lack of an annual CPA audit. While these actions would not comply with the terms of Green River Marina's license agreement, there are no associated penalties.

Parks requires and relies on the CPA financial audit to determine whether rental payments have been underpaid or overpaid. However, it appears that Parks only followed up on the audit finding related to the annual reconciliation of rental payments.

For the year ended December 31, 2009, Green River Marina's audit stated that Green River Marina underpaid concessions by \$1,889. This audit also stated that staff were unable to show proper documentation for support of some disbursements and that the required maintenance account is not being funded adequately.

According to the CPA that conducted the annual audit, Green River Marina's explanation for not locating invoices to support disbursements was that the documents were misfiled or lost. The maintenance account, as required by the license agreement, was reportedly not funded properly because management stated they did not have sufficient funds to transfer into the maintenance account. The license agreement requires that Green River Marina deposit a sum of money equal to two and one-half percent of the marina's gross sales from the preceding month into a working maintenance account. This money is required to be deposited in a Kentucky bank on the 10th business day of each month.

The annual audit for the year ended December 31, 2009, included the following note related to Green River Marina's maintenance account:

The licensing agreement with the Commonwealth of Kentucky also requires the Company to deposit a maintenance fee, in the amount of 2.5% of collected revenue, into a restricted back account for future repairs. The company has not complied with this requirement. At December 31, 2009, the amount of undeposited fees is \$25,749.08.

Findings and Recommendations

Calendar year 2009 was the only audit performed during our review period that identified this issue as an audit finding. According to the CPA performing the audit, the maintenance fee was only selected for random testing in prior years. However, for calendar year 2009, this account was tested for the whole year because it became evident that management did not comply with the lease requirement.

To be certain whether any penalties were applied for Green River Marina's failure to comply with their license agreement, the APA contacted an attorney in Tourism's Office of Legal Affairs. We were informed that Parks makes every effort to work out a remedy with the marina operator. A substantial default of the terms of a license agreement could result in a potential termination. However, staff are not aware of an actual termination due to default. According to the Tourism attorney contacted, it is Parks' position that if a license agreement was to be terminated due to a breach, Parks and/or the Commonwealth could face a significant financial obligation because according to the license agreement Parks is required to reimburse the owners of the marina for capital improvements made to the facilities.

Without specific penalties for not complying with the terms of a license agreement, Parks has limited ability to enforce the license agreement. To provide an incentive for a licensee to comply, the license agreement should provide specific penalties for violating its terms.

Recommendations We recommend that Parks amend the license agreements with state leased marinas to include specific penalties for noncompliance to be associated with the requirements of the license agreement. For example, penalties could be in the form of interest charges or administrative charges based on the length of time that the operator was out of compliance.

Parks should also adopt policies and procedures to oversee and enforce license agreement terms and penalties. These procedures should identify who is responsible for following up on audit findings and contacting the marina to inform them of applicable penalties due to noncompliance.

We also recommend that Parks amend the license agreement to include termination language that could mitigate the financial risks to the Commonwealth if the marina operator is in breach of the terms in the license agreement. This amendment should not minimize the improvements made by the marina operator but should provide additional protection to Parks and the Commonwealth if the marina operator is in substantial breach of their license agreement. The license agreement should also define what noncompliance would constitute a substantial breach of contract.

Findings and Recommendations

Finding 5: A review of Green River Marina was conducted in 2008 by Parks' Internal Audit Branch but the report was not distributed to appropriate personnel and it did not result in Parks taking action to address audit findings.

Parks' Internal Audit Branch conducted a review of Green River Marina in August 2008. This review did not result in policy and procedure changes or any documented actions. A memorandum was prepared instead of a formal report because Green River Marina refused to provide requested documents. Internal Audit did not develop a finding that Green River Marina declined to provide requested information though the license agreement allowed Parks to access the marina's records. This memorandum was provided to two members of executive management in Parks. However, Green River Marina was not made aware of the review's findings, though they were aware that a review was conducted. Our examination of the internal audit process found that the Internal Audit Branch did not have written policies and procedures concerning how special request audits are initiated, approved, and reported. An internal audit has limited benefit if the audit reports are not finalized and distributed to all parties involved.

Parks' Internal Audit Branch conducted the review of Green River Marina at the request of the Director of Customer Service. The documented objectives of the review were to verify gross sales receipts with concessions paid and boat slip rental payments with boat slip occupancy.

The second amendment to the license agreement with Green River Marina, dated November 6, 1997, contains the following terms that are applicable to any reviews of Green River Marina:

The Licensee shall be required to keep complete and accurate financial records of all transactions relating to the marina and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the licensed premises...

The Licensee agrees that the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission or their duly authorized representatives shall have access to any books, documents, papers, records, or other evidence which are directly pertinent to this Agreement for the purpose of financial audit or program review.

While Park's internal auditors conducted the on-site fieldwork during the 2008 review, they became aware of documentation that led them to suspect that other businesses were being conducted at the marina. Subsequent to Green River Marina's refusal to provide requested documentation to the internal auditors, a memorandum was written to discuss the review. A formal report, however, was not issued "because the auditor could not complete her review."

Findings and Recommendations

The recommendations made in the memorandum did not address the review's objectives. The following three recommendations were made at the conclusion of the memorandum:

1. Parks enforce 304 KAR 1:010 – Parks should specify to Green River Marina that they maintain specific documents and perform daily recordkeeping functions.
2. Parks interpret the meaning of “independent” certified public accountant as stated in 304 KAR 1:010, Section 2.
3. No boat(s) are to be permanently docked at the gasoline dock as this is a safety hazard.

Due to questions raised by APA auditors while reviewing this memorandum, we were informed that there are no written policies and procedures for Park's internal audit process. However, various audit programs exist for specific facilities within Parks. Audits of state leased marinas are not typically performed by Parks' Internal Audit Branch because the license agreement requires an annual financial audit by a CPA. Further, Parks' Internal Audit Branch determines the appropriate distribution of reports for each review and no standard distribution has been developed for the different report types.

By not distributing the findings from the Green River Marina review to the auditee and appropriate management, their opportunity to respond to and resolve issues identified was limited. The internal audit findings were also not shared with other parties within Parks that are involved with Green River Marina, such as Parks' Financial Operations, Tourism's Office of Legal Affairs, the Park Manager, and Green River Marina.

Recommendations

We recommend that Parks develop written guidelines concerning the Internal Audit Branch audit plan and process. At a minimum, a policy should be developed to address the process to follow when performing a special audit. The policy should address the report and distribution process. A standard distribution checklist should be developed and consistently followed for the various types of internal audits or reviews. This distribution checklist should include Financial Operations given their responsibility to review financial information.

We also recommend that the refusal to provide documentation as required by a license agreement or other contract should be documented by Internal Audit as a finding and this refusal should not prevent the audit from being completed and formally reported.

We further recommend that Parks address the recommendations made in the 2008 Internal Audit review.

EXHIBITS

Concession Payment Report
Green River Marina
Month of _____

Table with 3 columns: Description, Calculation (e.g., 0.00 x 5.5%), and Result (e.g., 0.00). Rows include categories like Boat Slips, Boat Rental, Floating Cabins, Dinner Cruise, Gas and Oil, Food and store items, Labor, and Fishing License.

Attach explanation for any credits taken:

I certify the amounts entered on this report are true and correct and comply with the terms of the License Agreement currently in effect.

Signature _____

Title _____

Date _____



STEVEN L. BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
DEPARTMENT OF PARKS
11th Floor, Capital Plaza Tower
500 Mero Street
Frankfort, Kentucky 40601-1974
Phone 502-564-2172
Fax 502-564-9015
www.parks.ky.gov

MARCHETA SPARROW
SECRETARY

GERRY VAN DER MEER
COMMISSIONER

DATE: September 16, 2008
TO: Debra Barlow, Audit Reviewer/Specialist
FROM: Connie Kell, Auditor
SUBJECT: Green River Marina, LLC Limited Review—August 12 – 14 & August 19 – 20

PURPOSE & SCOPE:

The Director of Customer Service, Sam Devine, requested that a field "limited" review be conducted for the period January 1, 2008, through July 31, 2008, on Green River Marina, LLC. Debra Barlow, Audit Reviewer/Specialist, and Connie Kell, Auditor I, from the Department of Parks Audit Division were assigned and performed said review. The view included the months of January 1, 2008 through June 30, 2008, as the books had not been closed out for the month of July and the concession report and payment for the month of July had not been processed.

The purpose of this review as directed by Sam Devine and Debra Barlow was to verify monthly concessions due and paid to the Commonwealth of Kentucky, Tourism, Arts, and Heritage Cabinet, Department of Parks. The objectives were to verify Green River Marina, LLC's gross sale receipts with concessions paid and slip rentals payments with slip occupancy. The review was performed on August 12 through August 14 and continued into the following week, August 19 through August 20. Attached is the letter of notification from Sam Devine dated August 5, 2008, to Marie Tucker, Manager of the Green River Marina, LLC requesting the information needed to perform the review. Maria Tucker is the individual who worked with the Department of Parks Audit Division's staff throughout the review. The Department of Parks Audit Division auditors met briefly with Dennis Brinley, owner, on Wednesday, August 13, 2008.

Per the Audit Reviewer/Specialist, Debra Barlow, a relationship analysis between income account balances and expense account balances was not an objective in performing this field limited review.

GENERAL:

Preliminary planning included obtaining and reviewing the attached copies of the concession reports from January through June 2008, copies of the original lease and lease amendments between the parties, and copies of the 2006 and 2007 Independent auditor's Annual Audit Reports, Financial Statements and Notes to Financial Statements as required by the Department of Parks.

See below content of lease agreement and lease agreement amendments as it relates to consideration and sub-leasing.

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The Second Amendment and Assignment to Amended and Restated License Agreement of October 13, 1989, Between Commonwealth of Kentucky The Finance and Administration Cabinet, Department Parks and Green River Marina, LLC, Page 2 of 7, Paragraph I., A. (working maintenance account) and Paragraph I., B. (rental consideration) dated November 6, 1997, states:

"...In consideration of the terms, conditions and mutual covenants as hereinafter put forth, and other good and valuable consideration, the existence, sufficiency and receipt of which are hereby mutually acknowledged, it is understood and agreed by and between the parties as follows:

I. The parties hereto agree that, except as modified herein below, all terms of the Amended and Related License Agreement of October 13, 1989, and the First Amendment to the Amended and Restated License Agreement of October 13, 1989, and Assignment dated July 27, 1992, shall remain the same. Furthermore, the Agreement, as amended, is hereby transferred, assigned and set over to Green River Marina Enterprises, LLC who shall assume of duties, liabilities, and responsibilities of the Associates in the operation of the Green River Marina, as established under the Agreement, as amended, and this Amendment. The amended sections of the Amended and Restated License Agreement of October 13, 1989, as amended are set forth below and the changes are underlined to wit:

A. The first and second paragraph on pages 11 and 12 and (f) on page 12 (regarding IV, Maintenance is hereby deleted in it entirety and replaced with the following:

Throughout the term of this Agreement, the Licensee shall deposit in a Kentucky bank on the 10th business day of each month a sum of money equal to two and one-half percent (2.5 percent) of the gross sales of the total marina operation realized for the preceding one month for the purpose of providing to the Licensee a working maintenance account.

The Licensee may withdraw from the escrow deposit account at any time that funds are available on the condition that the Commissioner of Parks, or his designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The marina operator shall be deemed by this agreement to be authorized to draw from the above account as needed for the purpose of maintenance throughout the year, with the prior written approval of the Commissioner of Parks or his designee.

B. Section VII, Rental Consideration (page 14) is hereby deleted in its entirety and substituted with the following:

The Licensee agrees to pay to the Commonwealth rent in the form of a percentage of gross receipts of all operations of the marina except proceeds collected as taxes, five and one-half percent (5.5 percent) of gross receipts from all operations.

Payments shall be made monthly and shall be due on or before the close of business ten (10) working days after the end of the preceding month..."

The License Agreement between Commonwealth of Kentucky Department of Parks and State Property and Buildings Commission and Green River Marina, Inc., Greensbury, Kentucky, Section 22. Assignment of Interest, dated December 1, 1971, states:

"No assignment of this agreement or an interest therein and no sub-license for any purpose excepting agreements relative to the storage and mooring of boats and boating equipment shall be made or granted by the Licensee without the prior written consent of the Department of Parks, which consent shall not be unreasonably withheld."

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The Amended and Restated License Agreement Between Commonwealth of Kentucky The Finance and Administration Cabinet, and the Department of Parks, and Green River Marina, Inc., Section XXI. Subleasing and Assignment, dated October 13, 1989, states:

"There will be no subleasing or assignments of the Amended and Restated License Agreement by the Marina without the prior written approval of the Department of Parks and the Finance and Administration Cabinet, and approval shall not be unreasonably withheld."

FINDINGS:

Verification of Slip Rental Payments with Slip Occupancy

Four (4) slips were occupied without record of receiving payment for moorage. Dock, slip number, and boat registration number are listed below:

DOCK	SLIP NUMBER	BOAT REGISTRATION NUMBER/OWNER	ESTIMATED LOSS REVENUE
Governor's Row	528	IN-4971 AF	\$1,200.00
Governor's Row	534	KY-0025 TY	\$1,200.00
Governor's Row	555	K-4637 BB (boat was chained on 08/20/08)	\$1,200.00
Governor's Row	561	KY-032 FZ (may be an incorrect registration number; a number may be missing)	\$1,200.00
Admiral's Way	Slip at the end of the Admiral's Way	Dennis Brinley's Personal Houseboat	\$4,500.00
Marina Dock	Docked near the marina's Restaurant/Office (H-9; H-10)	Houseboat Plus Sales Office	\$4,500.00
Gas Tank Dock	Docked at the marina's gas tank dock	Enuf's Enuf	\$4,500.00
Total			\$18,300.00

Revenue/Service Accounts That May Not Be Included In Monthly Concession Reports

Below is a listing of revenue/service accounts that appear to be not included in the monthly concession reports. In the accounting computer software system (Quick Books), accounts have been set up under the sub-account titled "Service."

It appears that there is also an account titled "Balance from Resort" which could not be identified.

CHART OF ACCOUNT NAME	CHART OF ACCOUNT NUMBER	CHART OF ACCOUNT TYPE	CHART OF ACCOUNT BALANCE AS OF 06/30/08
Membership/Non-Taxable	40001	Income/Service	\$4,971.25
Electric Reimbursement (\$3.00 Service Charge)	40200	Income	\$1,149.00
Finance Charge (Late Fee)	40800	Income	\$1,900.00
Resort Income (Rescheduling Fee)	Non-assigned	Income	\$251.10
Total			\$8,271.35

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Discovery Information On Businesses That May Be Operating From The Green River Marina

It appears that there may be other businesses operating from the Green River Marina. Below is a listing of businesses that may be operating from Green River Marina, LLC.

ENTITY	ORGANIZATION NUMBER	DISCOVERY INFORMATION/DOCUMENTS
Brintuck, LLC Houseboats Plus, LLC Houseboats	0660226	During the time of the audit, there was an observation of Houseboats Plus sales office/houseboat permanently moored in slips H9-H10 at the Marina, which is very near to the store/restaurant/office. Marina manager, Marie Tucker, stated houseboat occupants "provided security" for the Marina. Houseboats Plus is linked to the Marina's website, www.greenrivermarina.com . The Houseboat Plus telephone number as advertised on their website is one and the same as Green River Marina, 800-488-2512. Houseboats Plus is also featured in Green River Marina & Resort's brochure. Note: According to the website on September 15, 2008, there were several houseboats that had been marked "sold" between August 4 and September 15, 2008, with a total "listing" price of \$588,300.
Green River Lake Resort, Inc.	0510343	Two Green River Lake Resort, Inc.'s Profit and Loss Statements (January & April 2008) were inadvertently provided with Green River Marina, LLC documents (Profit & Loss Statements). Green River Lake Resort, Inc. credit card settlement tapes, and credit card receipts were also inadvertently filed in a box of credit card receipts for Green River Marina, LLC. All said documents were provided to the Audit Division by Marina's manager, Maria Tucker upon their arrival.
Kentucky Sport Fishing, LLC	Appears not to be register with the Kentucky Secretary of State	During the time of the audit, there was an observation of a large Kentucky Sport Fishing & More sign posted on the outside building of the Marina's store/restaurant/office and also a fishing boat docked near the Marina's store/restaurant/office. It appears to be used for these specific bookings. However, records indicate that Kentucky Sport Fishing & More pays moorage for Slip No. 112 located in the Sunrise Way Dock. Advertising Kentucky Sport Fishing & More brochures were also located in the Marina's store near the restaurant area. There is also a website for Kentucky Sport Fishing, www.kentuckysportfishing.com , that advertises being located exclusively at Green River Marina and is also "linked" to the Green River Marina's website, which is www.greenrivermarina.com
Lake Cumberland Boat Movers	0529300 (Pending Dissolution)	During the time of the audit, there was an observation made of an outside telephone call being received by Travis, Marina's office personnel and was heard to be making reference to boat movers upon his greeting in answering one of the incoming telephone line(s). Also, auditor, called the number 270-469-9102 taken from Lake Cumberland Boat Movers' website, www.lakecumberlandmovers.com and confirmed greeting as being answered "Lake Cumberland Boat Movers, Travis." Note : During the month of August, 2008, Lake Cumberland Boat Movers was linked to the Green River Marina's website. Another observation made was of two "escort vehicles" parked in the Green Rivers Marina's parking lot during entire time of the audit.
Premier Boatlifts & Docks, Inc.	Appears not to be register with the Kentucky Secretary of State	Premier Boatlifts is linked to Green River Marina's website, www.greenrivermarina.com and is also featured in the Green River Marina & Resort's brochure.

Discovery Information on the Entity Green River Lake Resort, Inc.

During the review of Green River Marina, LLC's documents, listed below are document discovered on Green River Lake Resort. Copies of these documents are attached.

Green River Marina, LLC's manager, Marie Tucker, had provided to the Department of Parks Audit Division a box of credit card receipts for the months of January through July. Among those receipts, there were several credit card receipts from another entity, Green River Lake Resort. Also, among the Green River Marina, LLC's Profit and Loss Statements that were provided by Marie Tucker, there were two Profit and Loss Statements for Green River Lake Resort, indicating income from several categories (see attached Profit and Loss Statements for January and April, 2008).

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Upon discovery of the documents on Green River Lake Resort, Audit Reviewer/Specialist, Debra Barlow made an inquiry regarding the entity. Marie Tucker stated that according to her attorney and accountant she did not have to disclose any information to the Department of Parks related to Green River Lake Resort and said this was the reason there were no documents made available to the Kentucky Department of Parks Audit Division during the audit.

Green River Lake Resort Documents					
Profit and Loss Statements:					
Profit and Loss Statement for January 2008					
	Total Income			\$33,052.58	
Profit and Loss Statement for April 2008					
	Total Income			\$53,443.96	
P&L Total Income Jan. & Apr. 2008					
Credit Card Settlement Reports					\$86,496.44
Credit Card Receipts (March, April, May, June, July 2008):					
March 29, 2008	Visa Sale		\$300.00		
March 29, 2008	Discover Sale		\$300.00		
March 29, 2008	Master Card		\$300.00		
	Subtotal			\$900.00	
April 2, 2008	AMEX Sale		\$300.00		
April 4, 2008	Visa Sale		\$2,299.00		
April 5, 2008	Mastercard Sale		\$110.00		
April 6, 2008	Visa Sale		\$110.00		
April 8, 2008	AMEX Sale		\$106.00		
April 8, 2008	Visa Sale		\$300.00		
April 11, 2008	Mastercard Sale		\$300.00		
	Subtotal			\$3,525.00	
May 5, 2008	Visa Sale		\$93.14		
May 5, 2008	Visa Sale		\$80.52		
May 8, 2008	Visa Sale		\$300.00		
May 9, 2008	Visa		\$440.00		
May 14, 2008	Visa Sale		\$220.00		
May 15, 2008	AMEX Sale		\$600.00		
May 16, 2008	AMEX Sale		\$8,100.00		
May 16, 2008	Mastercard Sale		\$100.00		
May 19, 2008	Visa Sale		\$106.00		
May 20, 2008	Visa Sale		\$4,944.00		
May 20, 2008	Visa Sale		\$950.00		
May 23, 2008	Visa Sale		\$300.00		
May 24, 2008	Mastercard Sale		\$225.00		
May 26, 2008	Mastercard Sale		\$550.00		
May 27, 2008	Visa Sale		\$100.00		
May 30, 2008	Mastercard Sale		\$300.00		
	Subtotal			\$17,408.66	
June 25, 2008	Mastercard Sale		\$52.98		
	Subtotal			\$52.98	
July ?, 2008	Visa Sale	\$ 275.00	\$275.00		
July ?, 2008	Visa Sale	\$ 100.00	\$100.00		
July 12, 2008	Visa Sale	\$ 291.??	\$291.??		
July 29, 2008	Visa Sale	\$ 590.00	\$590.00		
	Subtotal			\$1,256.00	
Total Credit Card Receipts Mar. – Jul. 2008					\$23,142.64
Total					\$109,639.08

Green River Marina, LLC Limited Review—August 12 – 14 & August 19 – 20
 August 25, 2008
 Page 7 of 7

RECOMMENDATIONS:

1. Department of Parks enforce 304 KAR 1:010. Accounting procedures. In Section 1; which states..."All cash register, receipt documents, contract, and other means of supporting a cash or income transaction shall met the specific approval of the Department of Parks...

Department of Parks should specify to Green River Marina, LLC that they maintain specific documents and perform daily recordkeeping functions as follows:

- a) maintain cash register/point-of-sale system daily Z-tapes.
- b) perform daily reconciliation of credit card transaction receipts to the daily credit card settlement tape(s).
- c) perform monthly reconciliation of bank statement to balance sheet Chart of Account 10200 Regular Checking.

304 KAR 1:010, Section 1 is quoted in it's entirety below:

"Section 1. Accounting Records. (1) Prior to commencing business or upon written notice, licensees shall obtain the services of a Certified Public Accountant or a firm of Certified Public Accountants for the purposes of developing an accounting system including a system or internal controls covering all business operations conducted upon the premises covered by the license agreement in order to maintain accurate financial records and books relating to the licensee's operation. The accounting system developed shall meet the specific approval of the Department of Parks. All cash registers, receipt documents, contracts, and other means of supporting a cash or income transaction shall meet the specific approval of the Department of Parks. The licensee shall bear all expenses related to development of an accounting and internal control system including cash registers, receipt forms, and rental contract documents.

(2) The system used to record income must be in sufficient detail to disclose the amount of income derived from each category of business conducted on the premises in order to facilitate compliance with rental consideration provisions under the license agreement. A complete income chart of accounts proposed for use and the rate of rental consideration due from each source shall be submitted as a part of the accounting system study as set out in subsection (1) of this section."

2. Department of Parks interpret the meaning of "independent" Certified Public Accountant or firm of Certified Public Accountants -- as stated in 304 KAR 1:010, Section 2. Audit of Records. ... (1) Each licensee shall provide for an annual examination of the statements of assets, liabilities, and capital income and expenses performed by an independent Certified Public Accountant or firm of Certified Public Accountants... -- to mean "independent" without a "conflict of interest." The Certified Public Accountant or firm of Certified Public Accountant as stated in Section I, 304 KAR 1:010 Accounting Records should not be one and the same as the Certified Public Accountant or firm of Certified Public Accountant as stated in Section II, 304 KR 1:010 Audit of Records since being one and the same would result in a "conflict of interest." The Department of Parks require that the CPA or a firm of CPA's for the purpose of developing an accounting system, etc. be "totally independent" and without a "conflict of interest" to the CPA or a firm of CPA's performing the audit of records.
3. No boat(s) are to be permanently docked at the gasoline dock as this is a safety hazard.

CK

Attachments: Letter of Notification
 Lease Agreement
 Concessions Reports (January through June, 2008)
 Independent auditor's Annual Audit Reports (2006 & 2007)
 Green River Marina's Profit and Loss Statements (January & April, 2008)

TOURISM, ARTS AND HERITAGE CABINET RESPONSE



TOURISM, ARTS AND HERITAGE CABINET

STEVEN L. BESHEAR
GOVERNOR

MARCHETA SPARROW
SECRETARY

2400 CAPITAL PLAZA TOWER
500 MERO STREET
FRANKFORT, KENTUCKY 40601
502-564-4270 – OFFICE
502-564-1512 - FAX

LINDY CASEBIER
DEPUTY SECRETARY

MATT SAWYERS
DEPUTY SECRETARY

June 17, 2011

Mr. Brian Lykins, Executive Director
Office of Technology and Special Audits
Auditor of Public Accounts
209 St. Clair Street
Frankfort, KY 40601-1817

RE: Draft of Examination of the Compliance and Oversight Related to Green River Marina's Lease Agreement with the Department of Parks

Dear Mr. Lykins:

This letter is the response of the Department of Parks to your letter of May 23, 2011, submitting the examination of the Compliance and Oversight Related to Green River Marina's Lease Agreement with the Department of Parks (hereafter "the Report"). Your letter asked for our response by June 7, 2011. In our telephone conversation on June 3, 2011 you agreed to our request for an extension of time until June 21, 2011.

This response will address each of the recommendations of the Report. First, Parks would like to express its concerns with certain aspects of the investigation. DOP requested APA's assistance to determine whether sales commissions from Green River Marina and associated businesses operating on the leased premises were properly paid to DOP. Parks had good reason to believe that it was not receiving all commissions it was entitled to under its lease, but met with repeated resistance from the Lessee and its agents in trying to get the necessary facts related to the businesses that were being operated at the Marina.

With the exception of the boat sales brokerage business, which took place at the Marina, APA states that it could not substantiate that other business was being conducted at the Marina even though Parks' internal audit personnel provided documents showing that other businesses were generating revenue on site. The following additional information strongly supports the conclusion that other business was being conducted on the leased premises:

1. The Kentucky Secretary of State Records show filings for houseboatsplus.com dated 5/9/09, Lake Cumberland Boat Movers dated 11/5/08 and Green River Resort dated October 27, 2008 all showing assumed names for Brintuck, LLC, doing business at 2898 Lone Valley Road, Campbellsville, KY 42718, which is the marina

address. The owners of Brintuck, LLC are Dennis Brinley (holds Lease Agreement with Parks) and Marie Tucker (manages marina);

2. On May 23, 2011, Parks' auditors learned that a former marina employee was contacted in conjunction with APA's investigation of this matter well over a year ago, by APA auditor. The conversation with APA auditor lasted approximately 5 minutes. APA auditor was initially assigned to the audit in 2009 but did not participate when the actual audit work began in late 2010. The former employee has had no further contact from APA. The former employee personally conducted business transactions for Lake Cumberland Boat Movers and Green River Resort on the marina premises at the marina manager's instruction. The former employee has evidence of these facts.

3. We believe there is strong evidence that Lake Cumberland Boat Movers was known to be conducting business at the Green River Marina. DOP Auditors witnessed marina staff taking calls for this boat moving service. Auditors also called Lake Cumberland Boat Movers' phone number and Green River Marina staff answered the phone. Income from boat moving appears to be included on Green River Lake Resort's Profit/Loss statements obtained by DOP and not reported on concession reports. In August 2008, Lake Cumberland boat Movers was linked on the marina website and Lake Cumberland boat Movers equipment was on site during Parks audit review. Auditors checked the marina on subsequent visits and the boat moving equipment was on site each time;

4. Likewise, there is evidence that Green River Lake Resort was known to be conducting business at the Green River Marina. Parks' Auditors inadvertently obtained two Profit/Loss statements for this entity for January 2008 and April 2008 along with Sales Tax Return Summaries for sales tax paid to the Department of Revenue. Line items on the Profit/Loss statements included boat Sales, Boat transport, Starlite Houseboat Nautiline Boat, Cabin Rental, Catering income, none of which was included on concession reports to DOP. Total receipts for these two months amounted to \$86,496.44 not reported on concession reports to DOP. This amounts to a combined commission due DOP of \$4,757.39 but unreported and unpaid. When DOP Auditors asked for Profit/Loss statements for the entire period, the marina manager refused to provide them even though the line item revenues were obviously marina-related. Although business records were reportedly destroyed in a fire at the marina, it was our understanding that APA could obtain records of taxes paid from the Department of Revenue or from other sources.

The following are the comments of DOP to the recommendations of the Report:

1. Finding #1: DOP agrees with the recommendations of Finding #1. The revenue from any commissions on boat sales conducted on the marina's premises should be included monthly in a separate category on the Concession Payment Report and should include the applicable percentage of revenue from commission on boat sales at the marina. DOP will take steps to implement this recommendation immediately.

2. Finding #2: DOP agrees with the recommendation from Finding #2 that Green River Marina should submit monthly concession reports and payments in a timely manner and should keep underpayments current. DOP does not have the ability to unilaterally revise the license agreement with Green River Marina as the license agreement was negotiated at arms length via a procurement issued by the Finance Cabinet. However, going forward, DOP will include late payment clauses in marina license agreements as recommended. DOP has policies and procedures that address the responsibilities of park managers and DOP Financial Operations regarding the review of state leased marinas and will reduce the policies and procedures to writing as recommended. DOP will include penalties for late payments in the policies and procedures.

3. Finding #3: DOP agrees with the recommendations from Finding #3 except for the addition of a late fee to the license agreement as discussed above. DOP will create written policies and procedures and will implement the issues addressed in Finding #3.

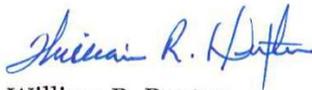
4. Finding #4: The Finance and Administration Cabinet procures marina concession agreements pursuant to KRS 45A. Each marina lease/license is competitively solicited and negotiated based on responses received to the solicitation. Thus, each marina lease/license is unique to the specific solicitation process and is ultimately approved by the Finance Cabinet. DOP agrees that policies should be adopted that include penalties for late payment but as stated above, does not feel it can unilaterally amend the lease/license agreements. As to the termination issue, the Commonwealth has the right to terminate an Agreement, at any time, without cause, by providing thirty (30) days' prior written notice pursuant to 200 KAR 5:312. However, termination is subject to the decision of the Supreme Court of Kentucky in *Ram Engineering and Construction, Inc. v. University of Louisville*, 127 S.W.3d 579 (2004), and its determination that this termination provision is subject to a good faith obligation of the Commonwealth to perform the agreement, a duty of fair dealing and a requirement that there be a substantial change of circumstances prior to the Commonwealth exercising its rights pursuant to the provision. In the event of the termination of this Agreement pursuant to this section, the lessee shall have the right to recover compensation from the Commonwealth in the manner and in the amount provided for in 200 KAR 5:312 (2) and (3) which states "If a contract is terminated for the convenience of the Commonwealth, the contractor shall have the burden of establishing the amount of compensation to which the contractor believes he is entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. The contractor shall specify and provide documentation of all revenues resulting from the contract, expenditures associated with the contract, and all profit or loss attributable to the contract. The purchasing officer may request the contractor submit additional documents and data, and may request appropriate accounting, investigations and audits. [Thereafter].....the purchasing officer may negotiate a settlement with the

contractor according to terms deemed just and equitable by the purchasing agency and in accordance with this administrative regulation. The settlement shall be subject to the prior approval of the Secretary of the Finance and Administration Cabinet, or his designee. If the contractor and the purchasing officer cannot negotiate a settlement, the Secretary of the Finance and Administration Cabinet shall issue a determination of the amount, if any, due the contractor.” Having said the above, DOP agrees that policies and procedures should clearly define penalties for payment non-compliance and future lease/license documents should establish clear definitions of breach of duty in performing the contract.

5. Finding #5: DOP’s internal audit could not be completed in 2008 due to a lack of cooperation and information from Green River Marina. Thus, DOP contacted APA for assistance. DOP auditors conduct regular audits of individual park operations and have routine policies and procedures for regular audits. Special audits involve unique circumstances based on the particular type of operation being audited. DOP agrees with the recommendation to develop written guideline/policy for distribution of reports for the various types of internal audits regularly performed. As for special audits, a standard distribution list would be difficult to anticipate by the very nature of a “special” review.

We appreciate APA’s assistance on this project and would be willing to meet to discuss the content of this response and the various issues addressed by the examination.

Sincerely,



William R. Dexter
Executive Director
Office of Legal Affairs

cc: Marcheta Sparrow
Gerry van der Meer

AUDITOR'S REPLY

Related to revenue from any other businesses, our report conclusions are based on the examination of documentation and on interviews conducted to identify revenue that we were able to substantiate and that also met the requirements of the license agreement. The Secretary of State's website does show that the owners of the Green River Marina also own other businesses. However, this information could not be used to substantiate revenue generated by the businesses or the location in which the revenue was generated. In addition, Parks' response to the examination is in error when stating that only a five minute conversation took place between an APA auditor and a former Marina employee.

Based on information provided by Green River Marina and its CPA, Green River Resort was merged with Green River Marina and all revenues were reported under Green River Marina. In addition, we were told that Lake Cumberland Boat Movers did not generate revenue at the marina. Due to a fire that destroyed the records necessary to review financial activity, we were simply unable to substantiate these assertions or the accuracy of the Green River Marina's concession reports. The brokering of boats was the only business activity that we were able to substantiate as not being included on the Green River Marina concession reports and occurring at the marina.

If the Department of Parks believes that there are other businesses that generate gross receipts and operate at the marina, the terms of the license agreement already require that the rental payment include the applicable percentage of revenue. Regardless of the business name or type of business, the license agreement is all inclusive that rent should be based on any business activities that take place on the premises of the marina. However, the concession report, in its current format, does not readily provide for the presentation of information from the Lake Cumberland Boat Movers business or from any business other than the marina. As recommended in the report, the policies and procedures regarding the completion and review of the Concession Payment Reports should include the definitions of sale categories used to complete the Concession Payment Report and the specific activities that should be included in the sale category.